



The Comptroller General  
of the United States

Washington, D.C. 20548

Goddard

## Decision

**Matter of:** Base Services, Inc.  
**File:** B-235422  
**Date:** August 30, 1989

---

### DIGEST

1. A protest of a cost comparison under Office of Management and Budget Circular No. A-76 is timely where the cost comparison appeal is filed at the procuring agency within the 15-day review period provided in the Federal Acquisition Regulation since a protester is required to exhaust its appeals with the agency prior to filing its protest with the General Accounting Office.

2. Where a protester merely repeats the requirements of a request for proposals (RFP) when the RFP calls for an explanation in detail broken out by each major functional area of work of the methods, procedures and organization to accomplish the requirements, the agency's decision that the protester is technically unacceptable is reasonable.

---

### DECISION

Base Services, Inc., protests the decision of the Department of the Army under request for proposals (RFP) No. DABT39-86-R-0090, to use another proposal as the basis for a cost comparison evaluation with the government's in-house cost estimate under Office of Management and Budget (OMB) Circular No. A-76. The RFP was issued by Fort Sill, Oklahoma, for base support operations at Fort Sill.

The protest is denied.

The RFP notified offerors that the government would select the proposal which offers the greatest value to the government in terms of performance and other considerations. Three elements of evaluation were announced, technical acceptability, management and cost realism with technical

046377/139446

acceptability being ranked higher than management. Within the technical acceptability element the following factors were ranked in order of importance: comprehension of specification requirements; quality control; organization and staffing; and adequacy of transition plan.

Base Services alleges that the Army's determination that its technical proposal was unacceptable is inconsistent with the Army's inclusion of Base Services in two rounds of best and final offers (BAFOs). Base Services contends also that the Army improperly adjusted Base Services' cost upwards so that the Army's in-house cost estimate was \$1.7 million less than Base Services'.

As a general rule, this Office will not review an agency's decision concerning whether work should be performed in-house or by a contractor because we regard this to be a matter of executive branch policy. Rice Servs., Ltd., B-227119, July 28, 1987, 87-2 CPD ¶ 102. Where, however, an agency uses the procurement system to aid in this determination by spelling out in a solicitation the circumstances under which it will or will not award a contract, we will consider a protest alleging that the agency has arbitrarily rejected a bid or proposal. Jets, Inc., 59 Comp. Gen. 263 (1980), 80-1 CPD ¶ 152. We do so because a faulty or unfair cost comparison would be detrimental to the procurement system. Apex Int'l Management Servs., Inc., B-228885.2, Jan. 6, 1988, 88-1 CPD ¶ 9.

Initially, the Army requests dismissal of Base Services' protest because Base Services was orally informed that it was not selected for cost comparison on March 8, 1989, and Base Services did not file its cost comparison appeal with the Army until March 28, 1989. The Army argues that since our Bid Protest Regulations require that agency-level protests be filed within 10 days after the basis of protest is known, 4 C.F.R. § 21.2(a)(2), § 21.2(a)(3) (1988), and Base Services' cost comparison appeal was not filed at the Army until 14 days after it knew of its basis of protest, Base Services' protest to the General Accounting Office (GAO) is untimely.

The Federal Acquisition Regulation (FAR), in accord with OMB Circular No. A-76, requires that agencies establish appeals procedures for informal administrative review of cost comparisons. FAR § 7-307. The regulations also provide that if the result of the cost comparison favors government performance, a public review period of at least

15 working days be allowed upon announcement of the cost comparison result and availability of the cost comparison forms and detailed supporting data to the interested parties. FAR § 7-306(b)(2), § 7-306(b)(3).

We have held that where a protester files a protest against alleged deficiencies in an A-76 cost comparison, it must exhaust its rights under the administrative appeals procedure at the agency before it may file a protest at GAO. ISS Energy Servs., Inc.--Request for Reconsideration, 64 Comp. Gen. 231 (1985), 85-1 CPD ¶ 116. Accordingly, it would be incongruous if we were to hold that a protest at this Office is untimely if a protester did not file its cost comparison appeal with an agency prior to the 15-day time period granted it by the FAR for reviewing the cost comparison documents. We find therefore that Base Services' protest is timely since its cost comparison appeal was filed at the Army within the 15-day review period.

In its comments on the agency report Base Services complains that it did not receive documents relevant to the validity of the Army's rejection of Base Services' proposal. This procurement is still on-going with no final award decision yet having been made which limits the documents that can be released. Moreover, Base Services' request for documents, was not filed within 2 days after it received the agency report and knowledge of the existence of the documents. 4 C.F.R. § 21.3(e). We have, however, reviewed all of the relevant evaluation documents in camera.

Base Services' lower cost proposal was not utilized for comparison with the government estimate because the Army found Base Services' proposal to be technically unacceptable. The Army found that Base Services' proposal failed to meet minimum evaluation scoring requirements in three of four of the technical evaluation factors, comprehension of specification requirements, organization and staffing and adequacy of transition plan. Base Services states that the Army did not inform Base Services that its proposal was not technically acceptable until its cost comparison appeal was denied. Base Services contends that the Army accepted Base Services responses to all errors, omission or clarification reports (EOC) which the Army issued to Base Services. Base Services concludes, therefore, that the Army found Base Services unacceptable based on issues not presented to Base Services in either EOC format or the oral discussions.

In reviewing protests concerning the evaluation of proposals and competitive range determinations, our function is not to reevaluate the proposal and make our own determination about its merits. This is the responsibility of the contracting

agency, which is most familiar with its needs and must bear the burden of any difficulties resulting from a defective evaluation. Intelcom Support Servs., Inc., B-222547, Aug. 1, 1986, 86-2 CPD ¶ 135. Procuring officials have a reasonable degree of discretion in evaluating proposals, and we will examine the agency's evaluation only to ensure that it had a reasonable basis. RCA Serv. Co., et al., B-218191, May 22, 1985, 85-1 CPD ¶ 585. Furthermore, it is well-established that the determination of whether a proposal should be included in the competitive range is a matter primarily within the contracting agency's discretion which will not be disturbed unless it is shown to be unreasonable or in violation of procurement laws or regulations. Metric Sys. Corp., B-218275, June 13, 1985, 85-1 CPD ¶ 682. Additionally, the fact that a protester does not agree with an agency's evaluation does not render the evaluation unreasonable or contrary to law. Logistic Servs. Int'l, Inc., B-218570, Aug. 15, 1985, 85-2 CPD ¶ 173.

We find that the Army's evaluation of Base Services' proposal was reasonable and we do not agree with Base Services that the Army accepted its responses to the EOC reports. After receipt of initial proposals the Army issued Base Services 156 EOCs of which 80 were in the technical acceptability element. The Army notified Base Services that throughout its technical proposal it merely "parroted" the performance work statement in the RFP. The Army told Base Services that its proposal just acknowledged the performance work statement requirements but did not demonstrate an understanding of the RFP, because it failed to explain exactly how Base Services intended to accomplish the specific requirements. In its first BAFO request, therefore, the Army asked Base Services to elaborate and clarify its proposal by providing more detailed information which the RFP required.

The Army received and reviewed Base Services' BAFO and, in its second BAFO request, the Army again notified Base Services that its proposal "parroted" the performance work statement in the form of direct quotations. The Army noted that this problem was specifically pointed out to Base Services in its first BAFO request and in the second BAFO request it again asked Base Services "to explain in detail broken out by each major functional area of work the methods, procedures and organization to accomplish the requirements as defined in the request for proposal" as the RFP required.

The contracting officer also determined that oral discussions should be conducted and he used the written EOC's as the agenda for the discussions. The Army's transcript of

the oral discussions shows that Base Services acknowledged some parroting of the performance work statement in its proposal. In oral discussions, Base Services stated that its compliance with the Army and base regulations is generally how it planned to perform the contract. After some discussion on this matter the contracting officer again stated that the Army's main concern with Base Services' proposal was that Base Services just states that it will perform the work but Base Services did not state what craft will do the work (whether a journeyman carpenter or a laborer would be used for a particular activity). It is clear from the record, therefore, that the Army articulated several times its concern that Base Services was not stating how the RFP's requirements would be met.

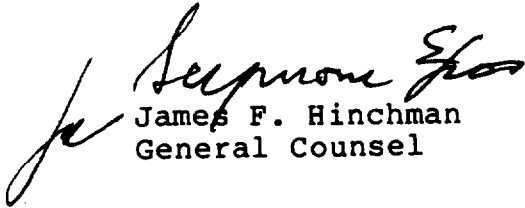
After reviewing Base Services' second BAFO, the Army found that Base Services had improved certain aspects of its proposal such as its quality control plan. However, the Army found that Base Services was still merely repeating the performance work statement and was not explaining how it would accomplish certain of the technical requirements of the RFP. For example, Base Services' proposal for plumbing and piping systems, which was evaluated under the utility work areas subfactor of the Comprehension of Specification Requirements factor, repeats almost verbatim the RFP's requirements. Base Services merely prefaced the performance work statement which was copied from the RFP with the phrase "we acknowledge and agree to." The Army rated this portion as unacceptable and we have no basis to disagree since Base Services gave no indication as to how it would perform this aspect of the contract.

Similarly, a review of Base Services' proposal under the air conditioning, refrigeration systems, and ventilation systems and exhaust fans portions of the utility work areas subfactor shows that Base Services' proposal was repetitive of the performance work statement's requirements despite the notifications given in the EOC's that Base Services should not merely repeat the RFP and that Base Services should state how it would accomplish the RFP's requirements.

In these and other areas Base Services proposal was found unacceptable and we find that the Army's determination was reasonable. Since Base Services was found unacceptable under the technical factor of its proposal, the Army reasonably rejected Base Services' proposal and its cost comparison appeal.

With respect to Base Services' contention that it had a lower price than the offeror selected to make the cost comparison, it is irrelevant as Base Services was properly rejected as technically unacceptable. Logistics Servs. Int'l, Inc., B-218570, supra.

The protest is denied.

  
James F. Hinchman  
General Counsel